

5 August 1977

MEMORANDUM FOR: Assistant for Information, DDA

ATTENTION :

[REDACTED]

FROM : H. C. Eisenbeiss
Director of Central Reference

SUBJECT : Revision of the NSC Directive Implementing Executive
Order 11652

1. This memorandum is the Intelligence Directorate's response to the request, laid on at the [REDACTED] meeting on 29 July, for comments on the above subject.

2. Paragraph IB, Observance of Classification.

This paragraph of the NSC directive of 17 May 1972 deals specifically with transferring the classification of one document to another. It reads:

Whenever information or material classified by an official designated under A above is incorporated in another document or other material by any person other than the classifier, the previously assigned security classification category shall be reflected thereon together with the identity of the classifier.

We recommend that this whole paragraph be dropped, for the reasons indicated below.

First of all, that part of the directive contained in the last seven words of the paragraph ("together with the identity of the [original] classifier") is not really practicable and in fact is being completely or almost completely ignored in government.

Secondly, it is this paragraph of the NSC directive that is responsible for much over-classification. Although classification by paragraph may help reduce that unintended effect, it will not eliminate the problem. Paragraphs, like documents, more often than not contain material which is unclassified or at least of a classification lower than that of the paragraphs themselves. The Intelligence Directorate believes that better practices in classification would result if the producers of documents simply had the full responsibility for classifying the documents produced. It goes without saying that such producers must take into account the sensitivity of the materials they are using.

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3. Paragraph IIE, Notification of Expedited Downgrading or Declassification.

The requirements of this paragraph continue to be largely ignored in CIA as well as elsewhere in government. We believe that the provisions of the paragraph should be modified to make them more practicable, and that they should then be enforced. We recommend that the second sentence and the last twelve words of the first sentence of the paragraph be deleted and replaced by the following:

all agencies and departments known or considered likely to be holders of the information or material in question.

The importance of a "notification" provision should not be minimized or overlooked. Unless there is some such provision, made obligatory, users of classified files and libraries in government will not be able to know the actual classification status of documents and materials they are consulting.

4. Paragraph IIIG, Classification Review Requests.

We have no specific changes to recommend with regard to this paragraph, but suggest that consideration be given in the Department of Justice or in the Office of General Counsel to bringing the language and provisions here more into line with those of the Freedom of Information Act and court decisions thereon.

5. Paragraph IVC, Paragraph Marking.

We believe that the language of this paragraph should be amended to make it clear that dissemination controls and codewords are to be part of the paragraph markings.

6. Paragraph VII, Data Index System.

We recommend that this entire paragraph be dropped. Indexes are expensive to build and maintain and the purpose of this particular provision is not fully clear. If the entire paragraph cannot be dropped, then we recommend that at least the requirement for including items (a), "Identity of classifier," and (c), "Addressees," be eliminated. The "identity of classifier" can in each case be obtained from the document in question, and the storing of "addressees" is not only expensive in terms of computer storage space but also somewhat meaningless in these days when copying equipment is available almost everywhere.

H. C. Eisenbeiss

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REVIEW OF NSC IMPLEMENTING DIRECTIVE OF MAY 1972

(APPLICABILITY TO THE NEW E.O. REPLACING F.O. 11652)

The following comments are directed at problem areas in the May 1972 Directive and offered in the context of correcting, omitting or clarifying aspects of the old order and which may be relevant in re-writing the implementing instructions for the new E.O.

I. Authority to Classify

- original ✓
- A. Personal and Non-delegable. okay
 - B. Observance of Classification. Clarification as to which classifier, the original or the current one, would be helpful although not absolutely necessary.
 - C. Identification of Classifier. okay
 - D. Record Requirement. okay.
 - E. Resolution of Doubts. I would prefer a statement here to the effect that the Classification must be justifiable.
- inter ✓

II Downgrading and Declassification

- ✓
- A. General Declassification Schedule and Exemptions. Believe this section will be unnecessary under the new E.O. and would be better separated into parts dealing with Documents/Records under the six yr. maximum and a separate paragraph on exemptions. No recognition is given in this section to the uniqueness of intelligence reports and the need to protect Sources and Methods (S&M) for an extended period of time.
 - ✓ B. Extracts and Compilations. I find the sentence difficult to read - clearer certainly better language could be used to make the same point.
 - ? C. Material Not Officially Transferred. The conclusion is reached that Approved For Release 2006/04/19 : CIA-RDP86-00674R000300050006-6 that a compromise can be achieved ...but what if there is disagree-

ment - to whom will the problem be referred? Can the action be taken by the Department doing the notifying if there is disagreement. Language should be clarified to point out final controlling authority.

"Key Official"
D. Declassification of Material 30 Years Old. Assume, of course, that 20 will be substituted for 30. About half-way down in item 2...the "head of the Dept." should be able to delegate some of this responsibility. The SF 315 should ~~not~~ have to be signed by only the Dept. Head. With the large bulk of intel records which exist, the DDI could spend an excessive amount of time just certifying these lists.

*Principal
deputies
"known"*
E. Notification of Expedited Downgrading or Declassification. Much depends on the new E.O. and just what and how much reporting the new E.O. will require. This para is fine as long as the words "to the extent possible" remain and are accepted. Care should be taken to avoid a commitment to advising all addressees of the type of action taken. This would almost require an entirely new system just to control and distribute correction and update notices.

III. Review of Classified Material for Declassification Purposes.

still unclear
A. Systematic Reviews. Sentence is wordy but actual interpretation provides for not reviewing ^{composers} records exempt from declassification as spelled out in Section 5 of the E.O. 11652. I hope the language in the new directive will be clearer.

*still unclear
had to go to
11/1/77*
B. Review for Declass. of Classified Material/over 10 years old. ~~xxx~~ I'm sorry to see this one go ... if this portion is placed under FOIA we simply move up the pressure and open appeals to possible court action. This was a nice section - it did provide for a mandatory review but provided a better time frame for the response. Whole section will have to be rewritten to conform with whatever may be said in the new E.O.

1100
C. Departmental Committee Review for Declassification. Will the ICRC still exist under the new E.O.? Implementing instructions will have to

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cover the appeal function. Certainly the more we can keep out of the courts the better. Sooner, rather than later, we are ^{likely} going to come up against a number ~~sections~~ of judges who are not at all supportive of this Agency.

D. Review of Classified Material Over 30 Years old. Read 20 in the 5th line from the bottom, the Dept. Head should be able to delegate.

E. Burden of Proof for Administrative Determinations. Would assume that the language used by the Attorney General might be needed in this section - words to the effect that release of the information would be demonstrably harmful to the National Security.....

F. Availability of Declassified Material. okay. Might even consider adding that once information is declassified it should be turned over to NARS as soon as possible.

G. Classification Review Requests. okay.

IV. Marking Requirements.

A. When Document or Other Material is Prepared. Will require re-writing to conform with intent and letter of the new E.O. New markings will be needed.

B. Overall and Page Marking of Documents. I think this section is too weak as written. ^{Should be} Markings should be required on every page and particularly when document is not permanently bound. ^{Markings reflecting the period of effect should be required on first page only or cover.}

C. Paragraph Marking. Re-write to carry out full intent of the new

E.O.

D. Material Other Than Documents. Okay

E. Transmittal Documents. Okay

F. Wholly Unclassified Material Not Usually Marked. Okay.

G. Downgrading, Declassification and Upgrading Markings. Okay.

H. Additional Warning Notices. ^{only on first page or cover}

(1) Okay

(2) Okay

(3) Okay

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with non-nat'l security type information which requires protection. It would be most useful if the E.O. does spell out that S&M is a Nat'l Security matter and therefore can be classified.

✓ V. Protection and Transmission of Classified Information

A. General. Okay.

B. Loss or Possible Compromise. Okay.

VI. Access and Accountability.

✓ A. General Access Requirements. Whole section will require re-writing to conform with the language and intent used in the new E.O.

(1) This section should be re-written to conform with the re-write of E.O. 10450 now in process.

(2) Okay

(3) Okay

✓ B. Access by Historical Researches. This section will have to be re-written to conform with the language used in the new E.O. I note here an omission which should be addressed. That is, there is no mention made of how the historians of each Agency will be required to act. On second thought, though, this is a matter for each Agency to decide upon and an E.O. is rather impractical and unnecessary. Delete my comment.

(3) I find this whole concept very weak ... ~~outside~~ historians outside the Executive Branch are granted access if they are engaged in Historical Research Projects. I think this opens Pandora's box ... wording should be explicit and historians should not be accorded a status more equal than other U.S. Citizens. The words "agree to safeguard" is certainly a loose construction in this section... should be tightened considerably.

(4) okay

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WOW
and up
10/18/80

C. Access by Former Presidential Appointees. A sorry state which provides unequal treatment and preferential status based on political considerations. We should try to tighten the language as much as possible to conform with whatever appears in the E.O. Congress has been long remiss is excepting papers and documents - work conceived and executed while/s ^{one is} legitimate member of the Ex c. body would rationally be considered Gov't Property ...but this is simply an extension of the situation where some are more equal than others. (I'll get off my soapbox now.)

NO

D. Consent of Originating Dept. to Dissem by Recipient. I would like to see a point made - maybe in this section - to the effect that no unclassified summaries or index cards ~~which~~ can be made from the original document ~~which~~ and which reveal or disclose the classified ^{substance} ~~nature~~ of the original document. (I'm referring to the State 123 Index cards.)

E. Dissemination of Sensitive Intelligence Information. Okay.

F. Restraint on Special Access Requirements. okay.

G. Accountability Procedures. The intent is this section is clear - I keep wondering ~~what~~ language we use to justify the manner in which we handle T/S cables?

VII Data Index System

NO
Dropped

No comments needed if in fact this section is dropped - and I do hope the concept is forgotten!

VIII Combat Operations

No comment

IX. Interagency Classification Review Committee

A thru D. Will require some re-writing to conform with the language in the new ~~Approved For Release 2006/04/19 : CIA-RDP86-00674R000300050006-6~~ ~~committee~~ of whatever type will function under the new E.O. I prefer to pass on this one.

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✓ X. Departmental Implementation and Enforcement.

A. Action Programs. Okay.

B. Departmental Committee. Seems to be Okay - one thing, more people in
is involved
an Agency should know who/and where ~~sheh~~ a committee is located.

C. Regulations and Reports. Language used in the implementing instructions
reporting
will need to conform with the stated/requirements in the new E.O. Section (3)
should be omitted (refers to the Data index system).

D. Administrative Enforcement. Language to conform/with the new E.O. and comply

✓ APPENDIX A. Okay.

✓ APPENDIX B. Okay.

Attr:

Subj: Comments on Implementing Directive to the
New Exec. Order on Classif.

* Sec. I C. Identification of Classifier -

Under the new EO the classifier's level of
classif. authority is the important point,
if Conf & Secret ~~the~~ authorities can classify by
A classified doc shud indicate this
info in addition to the identification of
the classifier. Or, a doc classified in
accordance with an approved guideline
(approved by a TS authority) shud indicate
the number or other identifier for the
guideline.

Sec II Downgrading & Declassification -

Since the decision has not been
made on the time period, it's difficult
to comment on implementation. In
general, the Order shud cover certain

(incl. Pres. libraries)
categories: Material at NARS, ~~foreign~~
~~material~~, material from foreign govt's,
material classified under previous execu-
tive orders, material received from
~~and~~ other US govt agencies. The notifica-
tion of ^{declassif.} ~~downgrading~~ actions is fine ~~the~~
in the present order. It would be unrealistic
to ^{require} ~~expect~~ agencies to notify all ^{original} recipients
of subsequent declassif. actions. The
more reasonable approach might be
for ^{each} agency to establish ^{internally} a central
reference ^{for} of such actions ~~so that~~
which ~~can~~ ^{and} be queried by other agencies.
~~As far~~ The costs involved for this under-
taking tho ^{are} ~~is~~ massive & this factor
must be ~~and~~ considered by the drafting
committee.

Another point worth including in this section is the definition of which records must be reviewed — only those for permanent retention as approved by the Archivist. A mention of the records mgmt aspects, e.g. records control schedules, etc. would be appropriate.

* IV. Marking Rights -

Since the RDS is abolished, the notation at the bottom of a page ^{end} ~~can~~ be simplified. The directive should definitely prescribe abbreviated forms of whatever statement is decided upon.

Paragraph Marking -
IV.c. The current directive calls for

para mkg only when a classified document
contains more than one security classif
or unclas. info. Will the new EO be
worded similarly? If so, a ~~Secret~~ doc
w/all secret paragraphs need not be
paragraph marked by